

Arizona Public Service Company, Employer-Petitioner and International Brotherhood of Electrical Workers, AFL-CIO, Local 387

Arizona Public Service Company and International Brotherhood of Electrical Workers, AFL-CIO, Local 387, Petitioner. Cases 28-RM-394 and 28-UC-111

June 5, 1981

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Bruce R. Kettler. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 28 transferred this case to the Board for decision. Thereafter, the parties filed briefs.¹

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

On the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

On December 15, 1980, the Employer filed the instant RM petition, requesting an election among the production and maintenance employees employed at its Palo Verde nuclear unit. On the same day, the Union filed the instant UC petition, seeking accretion of the Palo Verde employees into a systemwide production and maintenance bargaining unit. For the reasons stated below, we find that the group of employees in question are an accretion to the bargaining unit currently in existence, and we accordingly dismiss the Employer's petition for an election among these employees.

The Employer is a public utility engaged in the supplying of electric power throughout the State of Arizona. It currently owns and operates several nonnuclear generating units, and is in the process of building (as part owner) at Palo Verde, Arizona, the nuclear power plant involved herein.

The Employer's corporate headquarters are in Phoenix, Arizona. Its nonnuclear plants are located in Arizona and New Mexico. Relative to the other units in the system, Palo Verde (55 miles from Phoenix) is one of the closest to the company's headquarters.

Administration of the Employer's electric power generation production is centralized in the office of vice president of electrical operations whose offices are located in Phoenix. The plant managers at the nonnuclear units report to this official of the company. The power produced by each of the nonnuclear units is mingled with the power transmitted by the other units and thereafter dispatched throughout the State of Arizona.

The Palo Verde plant manager, like his equals at the other generating units, reports to the vice president of electrical operations. The Palo Verde plant will not service a distinct geographical area once it commences operation. Rather, the electric power generated by the nuclear unit will feed into the same control system as the power transmitted by the nonnuclear units and will be dispatched in the same manner as the nonnuclear-generated power.

The Employer's labor relations policies appear to be carefully determined and administered. All production and maintenance employees employed at the nonnuclear power generating plants are represented by the Union in a single systemwide bargaining unit. Since at least 1947, the Employer and the Union have had a bargaining relationship, during which time the Employer has by acquisition or construction added several generating units to its system. The practice of the parties in these cases has been to incorporate the production and maintenance employees at the newly acquired or constructed facilities into the contractual systemwide bargaining unit.²

The Employer's unrepresented employees are classified "performance review" employees. The performance review employees throughout the system are subject to salary guidelines and performance review policies established by central management. The rules described in the company handbook of rules for performance review employees are applied uniformly throughout the system. Transfers and job bidding for posted performance review vacancies are available to all performance review employees on the same basis.

Many benefits provided by the company are common to both represented and unrepresented employees. Thus, the performance review employees, as well as bargaining unit employees, enjoyed the same vacation policy, holidays, pension, and dental and medical benefits.

¹ The Employer's request for oral argument is hereby denied, since the record and the briefs adequately present the position of the parties.

² The current contract, dated April 1, 1980, expires on April 1, 1982.

The day-to-day supervision of Palo Verde production and maintenance employees appears to be vested in plant management. The Palo Verde plant manager retains significant authority in the implementation of the Company's uniform policies and in the direction of employees.

The Employer began hiring employees for the Palo Verde nuclear unit in 1977, for use in the production and maintenance areas.³ The nuclear unit presently employs approximately 62 production and maintenance employees, 12 or 13 of whom transferred from other units within the Employer's operations. These employees are now classified as performance review employees and are accorded benefits as described above.

Largely due to regulations imposed by the Nuclear Regulatory Commission, some special training is required for the Palo Verde employees. Nonetheless, the record evidences that many of the production and maintenance classifications at Palo Verde are common to all the Employer's plants, and further that the functions of the Palo Verde employees are comparable to those performed by their counterparts elsewhere in the Employer's system. And, as noted above, approximately 20 percent of the production and maintenance employees at Palo Verde transferred there from bargaining unit positions.

The Employer urges that Board precedent requires a systemwide unit as the only appropriate unit for its employees, but that substantial differences in skills, functions, and technological knowledge between the Palo Verde employees and bargaining unit employees and the local autonomy of the Palo Verde management compel refusal of the Union's contention that the Palo Verde employees constitute an accretion to the existing systemwide bargaining unit. Therefore, argues the Employer, the Palo Verde employees must be allowed the opportunity to decide for themselves whether to be incorporated into the bargaining unit or to remain unrepresented.

The Union opposes the Employer's petition, urging instead that the Palo Verde employees are merely an accretion to the existing production and maintenance unit. Should the Board decline to apply the accretion doctrine, the Union contends that no question concerning representation exists because the Union has made no claim to represent a majority of the employees in question, and that therefore the Employer's petition should be dismissed. In the alternative, the Union argues that, if the Board determines an election is appropriate, the

employees be given a choice between representation in a separate unit or the existing systemwide unit.⁴

Conclusion

We are persuaded by a number of factors, including the integrated nature of the Employer's operations, the community of interest that the employees in question share in common with their counterparts elsewhere in the Employer's system, and the bargaining history between the parties, that the Palo Verde employees are an accretion to the systemwide production and maintenance bargaining unit.

We have long held that in the public utility industry, operation of which is characterized by a high degree of integration, the optimum unit is a systemwide one. *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973). We deviate from this policy where the boundaries of the requested unit conform to a well-defined administrative segment of the utility's operation, where the requested unit serves a distinct geographical area, and where a separate unit can be established without involving disturbance of the employer's ability to perform its necessary function. *United Gas, Inc.*, 190 NLRB 618, 618-619 (1971); *Monongahela Power Company*, 176 NLRB 915, 917 (1969).

Here, the electric power that will be generated by the nuclear plant will feed into the same control system into which the other generating units' power flows and will be disbursed throughout the area which the Employer services. This integration of operations is reflected in the Employer's centralized administration of operations—illustrated by the fact that each plant manager reports to the vice president of electrical operations whose offices are located in Phoenix. Thus, the requested unit does not represent a unique administrative segment of the Employer's operations, nor will the Palo Verde generating plant service a distinct geographical area.⁵

Further, we believe that the Palo Verde employees share a community of interest with bargaining unit employees. It is clear that the labor relations policies for unrepresented employees are centrally determined and uniformly applied throughout the system. It is also clear that the Palo Verde production and maintenance employees, although presently classified performance review employees, occupy

⁴ In the event the Board directs an election, the Union also argues that certain technical employees should be included in the voting unit.

⁵ Although the record suggests that, because of computerization, the Employer's ability to perform its functions would not necessarily be curtailed by a cessation of work at Palo Verde, we find that this factor does not outweigh the above-recited factors indicating a high degree of centralization in the Employer's operations and administration.

³ The parties stipulated and we find that, although the number of employees will continue to expand, the present complement is representative.

many of the same classifications and perform the same functions as bargaining unit employees. In addition, we note that a not insignificant number of former bargaining unit employees now work in production and maintenance positions at Palo Verde. Finally, the record indicates that the Palo Verde employees enjoy many of the same terms and conditions of employment accorded bargaining unit employees. Accordingly, based on the Employer's centralized labor relations policies, the similarity of classifications, functions, and terms and conditions of employment of Palo Verde employees and bargaining unit employees, and the transfers from unit positions to Palo Verde production and maintenance positions, we find that the Palo Verde employees share a community of interest with the Employer's represented production and maintenance employees.

We also find significant that bargaining between the parties has historically been on a systemwide basis. The Employer in the past has extended recognition to the Union as representative of employees at facilities added to the utility system.⁶ We are reluctant to grant a less than systemwide unit where to do so would be contrary to extensive bargaining history on a systemwide basis. *Baltimore Gas, supra* at 201.

⁶ Since we utilize this fact merely as evidence that the parties have historically favored systemwide bargaining, we do not believe its relevance is nullified because the parties disagree as to the exact circumstances surrounding the Employer's extension of recognition.

Therefore, based on the above factors, we find that the Palo Verde production and maintenance employees are accretions to,⁷ and should be included in,⁸ the systemwide production and maintenance unit represented by the Union.

In view of the foregoing, we find that no question concerning representation of the Palo Verde production and maintenance employees exists, and we shall dismiss the petition in Case 28-RM-394.⁹

ORDER

It is hereby ordered that the petition in Case 28-RM-394 be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the existing systemwide bargaining unit for the Employer's production and maintenance employees, currently represented by International Brotherhood of Electrical Workers, Local 387, AFL-CIO, be, and it hereby is, clarified to include those production and maintenance employees located at the Employer's Palo Verde, Arizona, facility.

⁷ It is well established that employees accreted to an existing unit are not accorded a self-determination election. *The Goodyear Tire & Rubber Company (Apple Grove, West Virginia Plant)*, 147 NLRB 1233, 1234, fn. 6 (1974), and case cited therein.

⁸ The apparent local autonomy of Palo Verde management is a factor that favors nonaccretion. However, in considering an accretion issue, we examine a number of factors. We find in this case that local autonomy alone is insufficient to overcome the many factors supporting a systemwide unit.

⁹ Because of our disposition of this case, we need not address the other contentions urged by the parties.